

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	Civil Action No. 4:17-cv-40011-TSH
)	
Plaintiff,)	Judge Timothy S. Hillman
)	
v.)	
)	
DAVID L. TOPPIN, et al.,)	
)	
)	
<u>Defendants.</u>)	

**Declaration of Jeffrey N. Nuñez in Support of the
Plaintiff United States of America's Request for Entry of Default**

I, Jeffrey N. Nuñez, pursuant to 28 U.S.C. Section 1746, state as follows:

1. I am a trial attorney employed by the United States Department of Justice Tax Division, Civil Trial Northern Section, to whom the above-captioned case has been assigned.
2. This action seeks to reduce to judgment certain federal tax assessments made against the defendant, David L. Toppin, and to enforce federal tax liens against three parcels of real property located in the Commonwealth of Massachusetts.
3. On April 20, 2017, the defendant, David L. Toppin was personally served with the summons along with the United States' amended complaint, pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure via a process server that I engaged on behalf of the United States to serve the defendant at his primary residence, located at: 465 Salisbury St., Holden, MA 01520. *See* Dkt. No. 10.
4. On May 9, 2017, the defendant filed a motion for an extension of time in which to answer or otherwise respond to the amended complaint, asking that the deadline for such response be extended until June 30, 2017. Dkt. No 23.

5. On May 12, 2017, the Court granted the defendant's motion for an enlargement of time, allowing the defendant David L. Toppin until June 12, 2018, to file an answer to the amended complaint. Dkt. No. 29.

6. On June 12, 2017 the defendant David L. Toppin filed a motion to dismiss the amended complaint on jurisdictional grounds, advancing the arguments that are typical of tax protesters. Dkt. No. 42

7. On June 26, 2018, I filed the United States' opposition to the defendant's motion to dismiss. Dkt. No. 45.

8. On March 15, 2018, this Court denied the defendant David L. Toppin's motion to dismiss. Dkt. No. 53.

9. Accordingly, pursuant to Rule 12(a)(4)(A) of the Federal Rules of Civil Procedure, the defendant David L. Toppin had 14 days after the denial of his motion to dismiss (14 days after March 15, 2018) to serve an answer or other response to the amended complaint. The deadline by which defendant David L. Toppin had to serve an answer or other response was, therefore, March 29, 2018. The Court has not entered any order modifying this date.

10. No answer or other response has been received by the undersigned, or filed with the Court within the time limit set by the Federal Rules of Civil Procedure or fixed by the Court, or even at any time thereafter, as of the date of this declaration.

11. Furthermore, pursuant to this Court's May 9, 2018 Scheduling Order, the defendant David L. Toppin's initial disclosures were to be served on counsel for the United States by May 23, 2018. To date, the undersigned counsel has not received the defendant's initial disclosures. *See* Dkt. No. 60.

12. On information and belief, the defendant, David L. Toppin, is not minor, incompetent or a member of the military service, and he has actual notice of this case since he has appeared, and yet he has refused to file an answer to the amended complaint.

I declare under penalty of perjury, that the foregoing is true and accurate. Executed on this 5th day of November, 2018.

/s/ Jeffrey N. Nuñez
JEFFREY N. NUÑEZ
Trial Attorney, Tax Division
U.S. Department of Justice